

REMARKS

In the Final Office Action, the Examiner rejected claims 1-4, 10, 11, 16, 17, and 23-34. By this paper, Applicants have cancelled claims 17 and 34 and amended claims 11 and 30 for clarification of certain features to expedite allowance of the present application. These amendments do not add any new matter. Upon entry of these amendments, claims 1-4, 10, 11, 16, and 23-33 remain pending in the present application and are believed to be in condition for allowance. In view of the foregoing amendments and the following remarks, Applicants respectfully request reconsideration and allowance of all pending claims.

Claim Rejections under Doctrine of Obviousness-Type Double Patenting

In the Final Office Action, the Examiner rejected claims 1, 4, 11, 17, and 23-34 under the judicially created doctrine of obviousness-type double patenting based on claims 1-9 of U.S. Patent No. 6,702,412, issued on the parent application. The Examiner also rejected claims 2, 10, and 16 under the judicially created doctrine of obviousness-type double patenting based on claims 1-9 of U.S. Patent No. 6,702,412 in view of Abbott (U.S. Patent No. 6,230,903) and rejected claim 3 under the judicially created doctrine of obviousness-type double patenting based on claims 1-9 of U.S. Patent No. 6,702,412 in view of Reddicliffe (U.S. Patent No. 6,431,668).

Although Applicants do not agree that claims 1-4, 10, 11, 16, 17 and 23-34 are obvious over claims 1-9 of U.S. Patent No. 6,702,412 either alone or in view of the above-cited references, Applicants have enclosed a timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) as Attachment A. For the Examiner's convenience, Applicants have also attached (as Attachment B) a copy of the Power of Attorney and Correspondence Address Indication Form and related papers that were filed separately with the PTO on March 21, 2005. In view of the enclosed terminal disclaimer, Applicants respectfully request withdrawal of the foregoing rejections.

Further, Applicants have cancelled claim 17 and amended independent claim 11 to include the subject matter of claim 17, which was only rejected under the doctrine of double patenting. As such, Applicants respectfully assert that in view of the terminal disclaimer, independent claim 11, as amended, and the claims that depend therefrom (claims 16 and 27-29) are now also in condition for allowance.

Claim Rejections under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 30, 32, and 34 under 35 U.S.C. § 102(b) as anticipated by Abbott (U.S. Patent No. 6,230,903); and claims 30-33 under 35 U.S.C. § 102(b) as anticipated by Hubbard et al. (U.S. Patent No. 5,586,817). Applicants respectfully traverse these rejections.

Legal Precedent

Anticipation under section 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under section 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To maintain a proper rejection under section 102, a single reference must teach each and every limitation of the rejected claim. *Atlas Powder v. E.I. du Pont*, 750 F.2d 1569 (Fed. Cir. 1984). Accordingly, Applicants need only point to a single element not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter. The prior art reference also must show the *identical* invention “*in as complete detail as contained in the ... claim*” to support a *prima facie* case of anticipation. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989) (emphasis added).

Claims 30-33 not anticipated by the Hubbard Reference

Applicants respectfully assert that claims 30-33 are not anticipated by the Hubbard reference. Applicants have incorporated subject matter from dependent claim 34 (now canceled) into independent claim 30. Because claim 34 was not rejected under the Hubbard reference, Applicants stress that amended independent claim 30 and its dependent claims are not anticipated by the Hubbard reference. Accordingly, Applicants respectfully request that the Examiner withdraw the Section 102(b) rejections against claims 30-33 based on the Hubbard reference. In addition, Applicants believe that claim 31 is now in condition for allowance, because the only pending rejections against claim 31 are the above-described double patenting rejection and the Section 102(b) rejection based on the Hubbard reference.

Claims 30-33 not anticipated by the Abbott Reference

Independent claim 30, as amended recites “a first rail member configured to receive a second rail member expandably, wherein the first and second members each include an engaged end located proximate to cooperating portions of the first and second rail members and a distal end located opposite the engaged end.” In the Response to Arguments section of the last Office Action, the Examiner stated that “element 27 may be ‘configured to receive the second rail member expandably’ when viewed in combination with the connecting ‘slide assembly’ structure.” Page 7, lines 22-23. Applicants respectfully disagree. If the Examiner is suggesting that the slide assembly 20L of the Abbott reference is the “first rail member,” as recited in claim 30, Applicants respectfully point out that the second mounting bracket 47 is attached to the slide assembly 20L by studs 51 that extend through elongated slots 53 *on either side* of the second mounting bracket 47. See Fig. 2. As such, the Abbott reference cannot disclose “first and second members... [comprising] an *engaged end* located proximate to cooperating portions of the first and second rail members and a *distal end located opposite the engaged end*,” as recited in claim 30. (Emphasis added).

If, on the other hand, the Examiner is suggesting that the first mounting bracket 27 is the “first rail member,” as recited in claim 30, Applicants remind the Examiner that the first mounting bracket 27 and the second mounting bracket 47 of the Abbott are not even in contact with one another. *See* Fig. 2. As such, the first mounting bracket 27 cannot be “configured to receive a second rail member expandably, as recited in claim 30. For at least the reasons set forth above, Applicants respectfully assert that the Abbott reference does not anticipate independent claim 30, as amended, and the claims that depend therefrom.

Claim Rejections under 35 U.S.C. § 103(a)

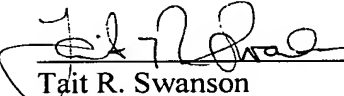
The Examiner rejected claim 11 and 29 under 35 U.S.C. § 103(a) as obvious over Klakovich (U.S. Patent No. 3,133,768) in view of Johnson (U.S. Patent No. 3,803,670); claims 11, 16, and 27-29 under 35 U.S.C. § 103(a) as obvious over Abbott (U.S. Patent No. 6,230,903) in view of Johnson (U.S. Patent No. 3,803,670); and claim 16 as obvious over Klakovich in view of Abbott. Applicants reiterate that independent claim 11 has been amended to include subject matter of dependent claim 17, and that claims 16 and 27-29 all depend from claim 11. Moreover, claim 17 was only rejected under the judicially created doctrine of obviousness-type double patenting. As such, in view of the foregoing amendment and the enclosed terminal disclaimer, Applicants stress that the Section 103(a) rejections are moot and should be withdrawn. For these reasons among others, claims 11, 16, and 27-29 are believed to be allowable over the cited references taken either alone or in combination with each other. Thus, Applicants respectfully request withdrawal of the rejections against claims 11, 16, and 27-29.

Conclusion

Applicants respectfully submit that all pending claims should be in condition for allowance. However, if the Examiner believes a telephone conference would expedite further prosecution, the Examiner is kindly invited to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

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Attachment A: Terminal Disclaimer

Attachment B: Copy of the Power of Attorney and Correspondence Address Indication

Form and related papers filed separately on March 21, 2005